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**DISTRICT I**

November 14, 2018

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You are hereby notified that the Court has entered the following opinion and order:

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2017AP2202-CR

State of Wisconsin v. Dennis J. Brookshire (L.C. # 2016CF1890)

Before Brennan, Brash and Dugan, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Dennis J. Brookshire appeals a judgment of conviction and an order denying postconviction relief. He pled guilty to four counts of delivering three grams or less of heroin, a controlled substance. The circuit court imposed four consecutive evenly bifurcated six-year terms of imprisonment, resulting in an aggregate twenty-four-year sentence. On appeal, the sole issue is whether the circuit court erroneously exercised its sentencing discretion. Based upon our

review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We summarily affirm.

On four separate occasions in April 2016, Brookshire sold heroin to an undercover officer. The first sale involved .76 grams of heroin, the second involved .79 grams of heroin, the third involved .43 grams of heroin, and the fourth involved .80 grams of heroin. Following the final sale, the police arrested Brookshire and executed a search warrant at his home. There, they recovered 4.98 grams of heroin, packaging materials, and a BB gun with a laser sight. The State charged Brookshire with four counts of delivering three grams or less of heroin, one count of possessing with intent to deliver more than three but less than ten grams of heroin, and one count of keeping a drug house. *See* WIS. STAT. §§ 961.41(1)(d)1., 961.41(1m)(d)2., 961.42(1).

While the charges in this matter were pending, the State charged Brookshire with additional crimes in a second case. A jury convicted him in that matter of first-degree intentional homicide while armed, two counts of first-degree recklessly endangering safety, and felony bail jumping. Before sentencing for those convictions, Brookshire decided to resolve the charges in the instant case with a plea bargain. Pursuant to its terms, Brookshire agreed to plead guilty as charged to four counts of delivering three grams or less of heroin, and the State agreed to recommend a prison sentence without specifying a recommended term of imprisonment. The parties also agreed that the remaining charges in this case would be dismissed and read in for sentencing purposes.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

The circuit court accepted Brookshire's guilty pleas. For each conviction, Brookshire faced maximum penalties of twelve and a half years of imprisonment and a \$25,000 fine. *See* WIS. STAT. §§ 961.41(1)(d)1., 939.50(3)(f). His total exposure was thus fifty years of imprisonment and \$100,000 in fines. At sentencing, the State, as agreed, recommended that the circuit court impose a prison sentence. Brookshire asked the circuit court to impose an aggregate term of five years of initial confinement and two years of extended supervision. The circuit court rejected Brookshire's proposal and imposed an aggregate, evenly bifurcated twenty-four-year term of imprisonment.

Brookshire moved for postconviction relief, contending that he had received an excessive sentence. The circuit court rejected his claim, and he appeals.

Brookshire contends that the circuit court erroneously exercised its sentencing discretion. He argues that the amount of heroin he sold to the undercover agent totaled 2.78 grams and that the twenty-four-year sentence he received as punishment exceeds the twelve-and-a-half-year term that the circuit court could have imposed if Brookshire had sold all of the heroin in one transaction. *Cf.* WIS. STAT. §§ 961.41(1)(d)1., 939.50(3)(f). In his view, the aggregate sentence therefore "offends notions of fair play and substantial justice." Brookshire further argues that because the circuit court knew he was awaiting sentencing before a different judge for a first-degree intentional homicide conviction carrying a mandatory life sentence, *see* WIS. STAT. §§ 940.01, 939.50(1)(a), the circuit court should not have concluded that he presented "such a danger to society" as to require twelve years of initial confinement for selling heroin. We reject these arguments.

The rule is well settled that sentencing lies within the circuit court's discretion. *See State v. Harris*, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. In challenging the circuit

court's exercise of discretion, a defendant must shoulder a heavy burden. *See id.* This court normally will sustain an exercise of sentencing discretion if the record reflects that the circuit court applied the proper legal standards, considered the relevant facts, and used a process of reasoning to reach a result that a reasonable judge could reach. *See State v. Cummings*, 2014 WI 88, ¶75, 357 Wis. 2d 1, 850 N.W.2d 915. We defer to the sentencing court's "great advantage in considering the relevant factors and the demeanor of the defendant." *See State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

The scope of the circuit court's sentencing discretion includes the length of a sentence within the statutory range, *see State v. Taylor*, 2006 WI 22, ¶19, 289 Wis. 2d 34, 710 N.W.2d 466, and "[w]hether to impose consecutive, as opposed to concurrent, sentences," *see State v. Ramuta*, 2003 WI App 80, ¶24, 261 Wis. 2d 784, 661 N.W.2d 483 (citation omitted). When exercising sentencing discretion, the circuit court is required to identify the sentencing objectives, which may "include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." *See State v. Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentencing court may also consider a wide range of other factors relating to the defendant, the offense, and the community. *See id.*

When a defendant challenges a sentence, the postconviction proceedings afford the circuit court an additional opportunity to explain the sentencing rationale. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). If the defendant thereafter pursues an

appeal, a reviewing court will search the entire record for reasons to sustain the circuit court's exercise of sentencing discretion. See *McCleary v. State*, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

Here, the circuit court indicated at the sentencing hearing that punishment and deterrence were the primary sentencing objectives, and the circuit court identified the factors that it deemed relevant to the sentencing goals. The circuit court discussed the gravity of the offense, stating that Brookshire was dispensing a highly addictive drug that has a devastating effect on the people who use it. The circuit court considered Brookshire's character, stating that he had made himself "very accessible" to those seeking drugs and further observing that he had a number of other convictions for which he was awaiting sentencing. See *State v. Fisher*, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (significant criminal record is indicative of character). In addressing the need to protect the public, the circuit court found that Brookshire was spreading "poison," and that heroin "has a significant impact on the community." The circuit court acknowledged that any sentences it imposed were likely to have a minimal impact on Brookshire in light of the mandatory life sentence he was facing for his first-degree intentional homicide conviction, but the circuit court explained that it intended to send a message about the ramifications of participating in heroin distribution. The record therefore reflects that the circuit court considered appropriate factors and properly exercised its discretion in selecting sentences in this matter.

Moreover, the sentences are not unduly harsh. "A sentence is unduly harsh or unconscionable 'only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" *Cummings*, 357

Wis. 2d 1, ¶72 (citation omitted). The determination of an adequate punishment, however, “is ordinarily left to the discretion of the trial judge. If the sentence is within the statutory limit, appellate courts will not interfere unless clearly cruel and unusual.” *See id.*, ¶75 (citation omitted).

The sentence for each offense here is indisputably within the statutory maximum. Brookshire nonetheless contends that his sentences are “entirely out of proportion to the actual facts.” We cannot agree. Indeed, we observe that the supreme court reviewed and upheld similar sentences under similar facts in *Weatherall v. State*, 73 Wis. 2d 22, 242 N.W.2d 220 (1976). There, the defendant was convicted of three sales of heroin to the same undercover agent. *See id.* at 24, 27. Two of the transactions involved a ten-dollar sale and one transaction involved a fifty-dollar sale. *See id.* at 27. The defendant faced fifteen years in prison for each of the three convictions. *See* WIS. STAT. §§ 161.14(3)(k) (1975-76), 161.41(1)(a) (1975-76) (establishing a maximum of fifteen years in prison for the sale of any amount of heroin); *see also Weatherall*, 73 Wis. 2d at 24. The circuit court imposed three consecutive eight-year sentences. *See Weatherall*, 73 Wis. 2d at 25. Thus, as in the instant case, the aggregate twenty-four-year term exceeded the maximum sentence that the defendant could have received for a single sale. The supreme court rejected the defendant’s arguments that his sentences constituted an erroneous exercise of discretion, stating, *inter alia*, that the court saw “no reason or basis for treating the three convictions ... as related to a ‘single criminal episode’” when each sale occurred on a different day. *See id.* at 33. Instead, the *Weatherall* court stated that a circuit court “has discretion ‘in determining the length of sentence within the permissible range set by statute,’” and noted the circuit court’s goal of “remov[ing the defendant] from the scene for a long, long, long time” because he was a “[drug] peddler” and “a cancer in our society.” *See id.* at 34 (citation, footnote, and some punctuation omitted).

Here, the circuit court emphasized that Brookshire “engaged in four separate heroin transactions,” each of which occurred on a different day. The circuit court found that each transaction “appeared to be pretty much the same” and each transaction therefore merited a similar sentence. The additional charges that were dismissed and read in reflected that Brookshire possessed more heroin than the aggregate 2.78 grams he sold to the undercover officer and supported the circuit court’s conclusion that he was a ready resource for those seeking to purchase and use the drug. In light of the circuit court’s concern about the harm that heroin poses to the community, the circuit court reasonably explained that it “intended to punish [Brookshire] for each separate transaction” that he conducted. The decision to impose such punishment rests in the circuit court’s discretion, *see Ramuta*, 261 Wis. 2d 784, ¶24, and we see no error.<sup>2</sup>

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>2</sup> We observe that the circuit court’s remarks at sentencing were brief. The length of the sentencing explanation required, however, varies from case to case, *see State v. Gallion*, 2004 WI 42, ¶39, 270 Wis. 2d 535, 678 N.W.2d 197, and, as reflected in the body of this opinion, we are convinced that the circuit court properly exercised its sentencing discretion. Nonetheless, to assist this court in future sentencing reviews, we encourage the circuit court to engage in a more extended discussion of the sentencing rationale than occurred here. *See id.*